

1 UNITED STATES DISTRICT COURT
2 CENTRAL DISTRICT OF CALIFORNIA
3

4 ARMANDO VILLANUEVA and)
5 HORTENCIA SAINZ, individually)
and as successor in interest to)
6 Pedro Villanueva, deceased; and)
FRANCISCO OROZCO, individually,) CASE NO.
7) 8:17-cv-01302-JLS (KESx)
Plaintiffs,)
8)
vs.)
9)
STATE OF CALIFORNIA; JON)
10 CLEVELAND; RICH HENDERSON; and)
DOES 1-10, inclusive,)
11)
Defendants.)
12)
_____)

13
14
15
16
17 VIDEOTAPED DEPOSITION OF JON CLEVELAND

18 BEVERLY HILLS, CALIFORNIA

19 FRIDAY, OCTOBER 20, 2017
20
21
22
23

24 SUMMER JIMENEZ
RPR, CSR 12917
25

1 A. Yes, it is.

2 Q. So we have some kind of dark pants, some white
3 T-shirt, and then a, I'm guessing, bulletproof vest but a
4 vest that says police on it; correct?

02:07PM 5 A. Yes.

6 Q. What kind of weapon were you carrying?

7 A. A Smith & Wesson semiautomatic pistol.

8 MR. GARCIA: Mark as Exhibit 2. I think this is
9 your weapon.

02:07PM 10 (The document referred to was marked as
11 Plaintiffs' Exhibit 2 for
12 identification, and a copy is attached
13 hereto.)

14 BY MR. GARCIA:

02:08PM 15 Q. Does that look to be your weapon?

16 A. Yes, sir.

17 Q. All right. And so does -- did you have a -- is
18 that a flashlight or is that a laser sight in the front?

19 A. It's a flashlight.

02:08PM 20 Q. And this appears to be the weapon that you had on
21 you on the date of the incident; correct?

22 A. I can't quite make out the serial number in the
23 photo but --

24 Q. It appears to be.

02:08PM 25 A. It appears to be, yes.

1 that responded there immediately; correct?

2 A. Yes.

3 Q. Or initially at least.

4 A. Yes.

02:24PM

5 Q. Did any other units ever arrive at that location
6 while you were there?

7 A. No.

8 Q. What did you see? First describe the Santa Fe
9 Springs swapmeet just generally where you were.

02:24PM

10 A. It's -- it's basically just an old -- it used to
11 be, I think, the drive-in movie theater. So it's just an
12 open flat parking lot.

13 Q. And so this -- unlike the other locations that
14 were intersections or public streets, this was a parking
15 lot; correct?

02:25PM

16 A. Yes.

17 Q. What did you see? How many vehicles?

18 A. I believe approximately 20.

19 Q. What were they doing?

02:25PM

20 A. I'd say the majority of them were just parked
21 watching, and there was at least two vehicles that were
22 doing donuts.

23 Q. Could you describe those two vehicles?

24 A. I believe one was a Camaro. I'm not sure about
25 the color. One was a red Chevy Silverado single cab

02:25PM

1 pickup.

2 Q. Had you ever seen the Chevy Silverado pickup at
3 any of the previous locations?

4 A. No. Not that I recall.

02:26PM

5 Q. The parking lot that you saw them at the Santa Fe
6 Springs swapmeet, is that private property?

7 A. I assume so.

8 Q. As far as you know, it wasn't --

9 A. As far as I know, yeah.

02:26PM

10 Q. Does the CHP have jurisdiction on private
11 property?

12 MS. DEAN: Objection to the extent it calls for a
13 legal conclusion.

14 THE WITNESS: Yes.

02:26PM

15 BY MR. GARCIA:

16 Q. You saw the red pickup truck doing donuts. How
17 many donuts did you see?

18 A. I can't quite recall the number. I'd estimate at
19 least four to six.

02:27PM

20 Q. Do you recall about what time you arrived at the
21 parking lot?

22 A. Not specifically, no.

23 Q. Was it nighttime?

24 A. Yes.

02:27PM

25 Q. After you saw the red pickup truck doing donuts,

1 Q. And the truck was facing east.

2 A. Correct.

3 Q. So would you have been looking towards the
4 passenger side of the truck?

03:04PM

5 A. Yes.

6 Q. And how far was the passenger side of the truck
7 from the front of your vehicle when you were in a stopped
8 position?

9 A. I would guess maybe about 30 feet.

03:04PM

10 Q. And was it directly in front of your vehicle or
11 was it offset some distance to the right or left?

12 A. No. It was -- it was basically 30 feet to my
13 east down what I learned later is MacArthur. I think
14 MacArthur Avenue.

03:04PM

15 Q. Okay. Was the truck actually on MacArthur?

16 A. Yes.

17 Q. And you would have still been -- make sure I get
18 the name of the street right -- on Pritchard?

19 A. Yes.

03:05PM

20 Q. Okay. And were you illuminating the truck at all
21 at that point?

22 A. Just with -- with the headlights of our vehicle.

23 Q. Did you have a spotlight on your vehicle?

24 A. No.

03:05PM

25 Q. Were the headlights of your vehicle angled

1 Q. Okay. Was your vehicle equipped with a PA
2 system?

3 A. Yes.

4 Q. Did you ever use the PA system at any time during
5 this incident?

03:09PM

6 MS. DEAN: Objection. Vague as to time.

7 BY MR. GALIPO:

8 Q. Any time prior to the shots being fired, did you
9 ever use your PA system? So I guess from maybe -- I

03:09PM

10 should say from the time you left the initial parking lot
11 area where you observed the donuts and stuff up until the
12 time of the shots, did you ever use your PA system?

13 A. No.

14 Q. Is that something you're able to do from the
15 driver's position in the vehicle? Use the PA system if
16 you think it's appropriate?

03:09PM

17 A. I could, but it's the same handheld mic that also
18 operates our police radio.

19 Q. Does your vehicle have any video recording
20 system?

03:10PM

21 A. No.

22 Q. Did you have any audio recording system on your
23 person?

24 A. No.

03:10PM

25 Q. What did you -- I'm sure this was already asked,

1 us, if you can undo that, showing us where it reversed and
2 what vehicle it impacted?

3 A. Okay.

4 Q. Okay. Thank you. And I'll show counsel that so
03:21PM 5 they can see it. Did it appear to go pretty much straight
6 backwards when it impacted that car?

7 A. Yes.

8 Q. And do you have any estimate as to the speed the
9 truck was going backwards as it was approaching this
03:22PM 10 parked vehicle?

11 A. It seemed very fast. I would -- I would say at
12 least 15 to 20 miles an hour if not faster.

13 Q. Okay. When the truck started in reverse, did you
14 hear the squealing of tires?

03:22PM 15 A. I don't recall.

16 Q. Did you see any burned rubber on the street
17 between where the truck started backing up and that
18 vehicle?

19 A. On -- on the photo or the night?

03:22PM 20 Q. Either one. Either on the photo or the night of
21 the incident, did you see black marks going in reverse
22 towards that parked vehicle?

23 A. No. No.

24 Q. Did you see any smoke coming from the tires as it
03:22PM 25 went in reverse?

1 communication before getting out?

2 A. No. Upon seeing his vehicle stopped, no.

3 Q. Okay. And when you got out of your vehicle,
4 first got out, to your knowledge, was the truck still
03:24PM 5 stopped?

6 A. I believe so. Yes.

7 Q. And while you were in the V -- which I think you
8 said for about one or two seconds; is that correct?

9 A. Yes.

03:24PM 10 Q. During that time, was the truck backing up?

11 A. Yes.

12 Q. Okay. So you watched the truck back up.

13 A. Yes.

14 Q. And as it was backing up, were you -- you would

03:25PM 15 have been primarily looking at the passenger side of the

16 truck.

17 A. Correct.

18 Q. And at that point, did you notice that there was
19 a passenger in the right front seat?

03:25PM 20 A. No.

21 Q. Were you looking at the truck as it was backing
22 up?

23 A. Yes.

24 Q. And what would you estimate the distance to be
03:25PM 25 between you and the passenger side of the truck? I'll

1 show you the photograph if you need it as backing up.

2 A. Maybe 15 feet.

3 Q. Okay. And were -- you don't recall if you had
4 the flashlight in your hand or not?

03:25PM 5 A. I don't think I did, but I can't recall
6 specifically.

7 Q. Okay. Do you have any specific recollection of
8 illuminating the truck with your flashlight?

9 A. I -- I know there's a flashlight attached to my
03:25PM 10 weapon. More than likely I would have used that, but I
11 can't say with certainty.

12 Q. Would that be tac light? What do you refer to is
13 as? The flashlight attached to your weapon?

14 A. Yeah.

03:26PM 15 Q. Just the flashlight attached to your weapon?

16 A. Yes.

17 Q. Okay. You don't know if that was on or not.

18 A. Yeah. I can't say for certain.

19 Q. Okay.

03:26PM 20 A. I would have either used that or a handheld
21 flashlight.

22 Q. Do you think you were illuminating the passenger
23 side of the truck as it was backing up?

24 A. I don't recall.

03:26PM 25 Q. Okay. So -- and how much time would you say

1 Q. Okay. And part of the reason you did that is
2 because you didn't want to get hit by the truck.

3 A. Yes.

4 Q. Okay. Now, you have training -- first of all,
03:31PM 5 you have training with respect to the use of deadly force;
6 is that correct?

7 A. Yes.

8 Q. But you also have training with respect to
9 positioning yourself relative to vehicles. For example,
03:31PM 10 if there's a vehicle that you think might be trying to
11 leave the scene or leave where you are, are you generally
12 trained not to stand in front of it?

13 A. Yes.

14 Q. Okay. Or if there's a vehicle that you're
03:31PM 15 afraid's going to back up, you're generally trained not to
16 stand behind it.

17 A. Yes.

18 Q. Okay. I mean, the general training is it's safer
19 when you can to be at the side of the vehicle rather than
03:31PM 20 directly in front of it or behind it. Is that fair?

21 A. Yes.

22 Q. Okay. Are you also trained that, if a vehicle is
23 moving or appears to be moving in your direction, you
24 should do whatever you can to get out of the way?

03:32PM 25 A. Yes.

1 Q. And you seem like you're in pretty good shape.

2 How tall are you?

3 A. 6'2.

4 Q. Okay. Did you play sports at all in high school
03:33PM 5 or college?

6 A. I -- not in college but in high school.

7 Q. What sports did you play?

8 A. I played football and baseball.

9 Q. Okay. I've been watching a lot of both football
03:33PM 10 and baseball. You -- what positions did you play?

11 A. What did I play? Tightened receiver, and then
12 baseball I always played 1st base.

13 Q. Okay. So -- and how old -- how old are you now?

14 A. I'm 39.

03:33PM 15 Q. Okay. You try to keep in pretty good shape?

16 A. I do.

17 Q. You probably can -- you're probably a pretty good
18 runner.

19 A. No. Not really.

03:33PM 20 Q. Not really? Well, how would you describe the
21 gait that you were using to get out of the way of the
22 truck? Would you say that you were walking? Jogging?
23 Running? How would you describe it?

24 A. I would say probably jogging.

03:34PM 25 Q. Okay. And did you feel, at least from your

1 perspective, the easiest way to get out of the way of the
2 path of the truck was to go towards the west curblane?

3 A. Yes.

4 Q. Okay. And you did that; true?

03:34PM

5 A. Yes.

6 Q. And did you start moving to the west curblane as
7 soon as you saw the truck starting to move forward?

8 A. I believe so. Yes.

9 Q. Okay. And do you have an estimate as to how long
10 it took you to get to that west curblane once you started
11 in that direction?

03:34PM

12 A. I don't know. A couple seconds.

13 Q. Okay. Were you watching the truck continuously
14 as you were moving to the west curblane?

03:34PM

15 A. Yes.

16 Q. Now, as you were going to the west curblane, did
17 you hear any gunshots?

18 A. Yes.

19 Q. And when you heard the gunshots, did you know who
20 was firing at that moment?

03:35PM

21 A. It was my partner.

22 Q. How did you know it was your partner?

23 A. Because I believe I could still see him in my
24 peripheral vision.

03:35PM

25 Q. Okay. Did you see muzzle flash or the sound or

1 A. I don't believe so.

2 Q. Okay. So you believe your partner fired first.

3 A. I believe so. Yes.

03:36PM

4 Q. Okay. Now, are you with respect to -- do you
5 have any training with respect to shooting at moving
6 vehicles?

7 A. We have policy but not specific training.

03:37PM

8 Q. Well, let me ask you this: Are you generally
9 trained that, first of all, if it can be avoided, you
10 should not position yourself in a spot where you can get
11 hit by a moving vehicle?

12 A. Yes.

03:37PM

13 Q. Are you trained that if, for whatever reason, you
14 find yourself in a position of potential risk, you should
15 try to get out of the way of the moving vehicle if you
16 can?

17 A. Yes.

03:37PM

18 Q. And are you trained that, if you can get out of
19 the way of the moving vehicle, you should do that rather
20 than firing at the vehicle?

21 A. No. I wouldn't say that's a rather. I would say
22 that's a consideration.

23 Q. Okay. I'm just wondering about your training
24 now.

03:37PM

25 A. Yeah.

1 out of the way, though.

2 Q. I know, that but if you can get out of the way --

3 A. If I --

4 Q. If you can get out of the way.

03:42PM 5 A. I should.

6 Q. And you should get out of the way. Is it your

7 training then you don't have to shoot?

8 A. I'm sorry. I'm not trying to argue with you.

9 Q. That's okay. Let me try to ask it a different
03:42PM 10 way.

11 A. You're asking if I'm able to get out of the
12 way --

13 Q. Yes.

14 A. -- as opposed to am I required to get out of the
03:42PM 15 way.

16 Q. You already told me that your training is to get
17 out of the way if you can.

18 A. Correct. I should.

19 Q. Right. So I guess what I'm asking you -- and
03:42PM 20 you -- that's what you were doing; right? You were moving
21 to the west to get out of the way.

22 A. Yes.

23 Q. Okay. Because that's part of your training, and
24 obviously you didn't want to get hit by the truck. Is
03:42PM 25 that fair?

1 fired?

2 A. I have -- I don't know.

3 Q. Do you know if it was more than one?

4 A. I believe so.

03:44PM 5 Q. Okay. As you were running -- you were running --
6 would you say jogging?

7 A. Uh-huh.

8 Q. Jogging.

9 A. Yes.

03:44PM 10 Q. I forget. Jogging?

11 A. Yes.

12 Q. As you were jogging across the street towards the
13 west, that's when you heard shots as you were jogging.

14 A. Yes.

03:44PM 15 Q. Okay. Where was your gun -- before you heard the
16 shots, where was your gun pointed? Down towards the
17 ground?

18 A. No. Towards -- towards the vehicle.

19 Q. You were pointing it towards the vehicle.

03:44PM 20 A. Towards the truck.

21 Q. When you were running.

22 A. Correct.

23 Q. But you did not fire until you heard shots.

24 A. I -- well, he -- he fired before me. Yes.

03:44PM 25 Q. Okay. Where do you believe you were in the

1 Q. Did you ever have to dive out of the way?

2 A. No.

3 Q. Did you ever fall on the ground?

4 A. No.

03:52PM 5 Q. Did you have any injury related to this incident?

6 Physical injury?

7 A. No.

8 Q. To your knowledge, did your partner have any
9 physical injury?

03:52PM 10 A. No.

11 Q. Did you yourself ever give a warning you were
12 going to shoot?

13 A. No.

14 Q. Were you ever trained that shooting at the driver
03:52PM 15 of a moving vehicle could disable the driver?

16 A. I think that's -- yeah. That's common
17 understanding.

18 Q. Common sense; right? So were you ever trained
19 that by shooting at the driver of a moving vehicle, that
03:52PM 20 could disable the driver and then cause the vehicle to go
21 out of control?

22 A. Yes.

23 Q. For example, are you familiar with a CHP policy
24 that prohibits shooting at a driver going the wrong way on
03:53PM 25 the freeway?

1 A. Yes.

2 Q. Okay. And is your understanding one of the
3 reasons for that policy is because if you disable the
4 driver, then the car could go out of the control and then
03:53PM 5 put people at risk of injury?

6 A. Well, that's -- no. That relates to the
7 apprehension shootings that I discussed earlier.

8 Q. Okay.

9 A. It's not a violent and atrocious felony, and the
03:53PM 10 act of driving recklessly in and of itself is not grounds
11 to shoot somebody. It's -- it has nothing to do with
12 whether the vehicle could go out of control.

13 Q. Okay. Do you generally agree with that based on
14 your training that reckless driving is not grounds by
03:53PM 15 itself to shoot someone?

16 A. Correct.

17 Q. And would that include based on your training
18 even if someone's driving the wrong way on a freeway?

19 A. Correct.

03:53PM 20 Q. Okay. So -- and this may be common sense but --
21 and you may have already answered it, but are you
22 generally trained that if you shoot at the driver of a
23 vehicle, that it could disable the driver from being shot
24 and it could cause the vehicle to go out of control?

03:54PM 25 A. Yes.

1 then we just maintained our weapons on -- pointed at the
2 vehicle until additional help arrived.

3 Q. Did initial help arrive at some point?

4 A. Yes.

03:56PM 5 Q. And how long did it take them to get there?

6 A. I don't recall. It felt like a very long time,
7 but I don't know what the time duration was.

8 Q. Do you recall the names of any of the officers
9 who arrived?

03:56PM 10 A. I believe Sergeant Zavala was one of the first
11 units to show up, and I believe that's -- that's the
12 black-and-white patrol car that you see in the photo.
13 Sergeant Edison and Investigator Leery showed up shortly
14 thereafter, and then from there, I lost track because a
03:56PM 15 lot of additional people showed up.

16 Q. Okay. Before the other unit showed up, did you
17 make any observations relative to the people in the truck?

18 A. Yes.

19 Q. What observations did you make?

03:56PM 20 A. At that time I saw that there was a passenger in
21 the vehicle. He had his hands above his face.

22 Q. Okay. And did you notice if there was someone
23 behind the driver's -- in the driver's seat?

24 A. Yes.

03:57PM 25 Q. Could you tell or did you have an impression as



1 STATE OF CALIFORNIA)
2) ss.
3 COUNTY OF LOS ANGELES)

4 I, JON CLEVELAND, say I have read the foregoing
5 deposition and declare under penalty of perjury that my
6 answers as indicated are true and correct.

7
8
9 _____
10 (Date)

11 _____
12 (Signature)
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1 STATE OF CALIFORNIA)
) ss.
2 COUNTY OF LOS ANGELES)

3 I, Summer Jimenez, Certified Shorthand Reporter,
4 License No. 12917, for the State of California, do hereby
5 certify:

6 That, prior to being examined, the witness named in
7 the foregoing deposition, to wit, JON CLEVELAND, was by me
8 duly sworn to testify the truth, the whole truth and
9 nothing but the truth;

10 That said deposition was taken down by me in shorthand
11 at the time and place therein named and thereafter reduced
12 to computer-aided transcription under my direction.

13 That the foregoing transcript, as typed, is a true
14 record of the said proceedings.

15 I further certify that I am not interested in the
16 event of the action.

17
18 WITNESS my hand this ____ day of

19 _____, 2017.
20
21
22

23 _____
Summer Jimenez, CSR NO. 12917
24
25